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RIGHTS OF THE CHILD

INDIGENOUS ISSUES

Written statement submitted by the International Indian Treaty Council,
a non-governmental organization in special consultative status

The Secretary-General has received the following written statement,
which is circulated in accordance with Economic and Social Council
resolution 1996/31.

[28 January 1999]

1. In 1789 the United States of America signed its first treaty under the Constitution with American Indian tribes. At that time the United States Government pledged that it would build its relationship with American Indians based on consistency, fairness and honour. Since that time indigenous peoples have survived, having gone through untold suffering, tragedy, and loss of family and relatives. Today there are over 557 federally recognized Indian tribes in the United States. Each tribe has a unique history and traditions that comprise its cultural identity.

2. The Indian children who have had to live through government policies which sought to separate them from their parents, many of them placed in boarding schools far from home, have shared our heartache and despair. That was an attempt by the United States Government to undermine the family and tribal structure of indigenous communities and begin a policy of ethnocide, more commonly referred to as assimilation - the destruction of a culture and way of life handed down from generation to generation. The abuse of the American Indian by the United States Congress has had a negative impact within the very institutions that were supposed to provide for their health, education and well-being.

3. The International Indian Treaty Council (IITC) will confine its statement to judicially created exceptions by the courts concerning the Indian child and of how they undermine current provisions in the Indian Child Welfare Act of 1978 (ICWA), as an example of continuing interference with parents, families and tribal members.

4. ICWA was the product of rising concern in the mid 1970s over the consequences to Indian children, Indian families and Indian tribes of abusive child welfare practices that resulted in the separation of large numbers of Indian children from their families and tribes through adoption or foster care placement, usually in non-Indian homes. United States Senate oversight hearings in 1974 yielded numerous examples, statistical data and expert testimony documenting what one witness called "the wholesale removal of Indian children from their homes ... the most tragic aspect of Indian life today". A number of witnesses also testified to the serious adjustment problems encountered by such children during adolescence, as well as the impact of the adoptions on Indian parents and the tribes themselves.

5. If the provisions of ICWA are not adhered to, state court orders regarding adoptions, termination of parental rights and other custody issues can be invalidated. In essence, it is in everyone's best interest to not ignore ICWA. As a result of resistance to ICWA, however, what has emerged are court-crafted exceptions that seek to prevent its application. It should be noted that these exceptions have to do with attempts by various courts to define who qualifies as an Indian for the purposes of the Act. A major problem, as a result is that these exceptions vary from state to state and are not uniformly recognized, even amongst the courts within a given state! The judicially created exceptions to ICWA circumvent the application and intention of the Act and effectively frustrate the purpose of allowing tribes to make decisions about its people.

6. An outright attack against ICWA is the "existing Indian family doctrine". Under this judicially carved exception to ICWA, courts look to the

biological parents of the children to decide whether they constitute an Indian family. In deciding if a child is part of an Indian family, courts will look at whether a child was taken from parents who appear to be "real" Indians and who maintain an Indian family unit. If the court finds that the parents do not constitute an "existing Indian family", then courts have found that the preservation of an Indian family is not at issue. In such cases, courts reason that the purpose behind ICWA - to preserve Indian culture and promote the stability and security of Indian tribes and families - is not frustrated. Thus, when the "existing Indian family doctrine" is applied, the removal of a child is not in violation of ICWA since the Act, the argument goes, does not apply to that child.

7. Currently at issue is the new Adoption and Safe Families Act of 1997 (P.L. 105-89). The United States Congress enacted changes that have impacted ICWA on 13 November 1997. The new Act has created a major shift in federal policy on foster care and permanency planning for children. The Adoption and Safe Families Act has monetary incentives for states and counties (\$4,000 for each foster child adopted, plus an additional \$2,000 for any foster child that is determined to have special needs). American Indian children are still being adopted at a very high rate, and many have special needs.

8. The new federal standards under P.L. 105-89 impact certain Indian children under state care and custody. P.L. 105-89 amends laws (Title IV-B and IV-E of the Social Security Act) that do not specifically address ICWA, and its legislative history does not specifically address ICWA. The law redefines when "reasonable efforts" to reunify need to be made. It exempts state agencies from this standard of effort for families under their care when circumstances include specific situations. A striking point of contention is that a state must initiate a petition to terminate parental rights when:

- (a) a child has been in foster care for 15 of the most recent 22 months;
- (b) a child has been determined to be abandoned; and (c) a parent has been involved in a variety of felony crimes related to the child or other parent of the child.

9. The exploitation and abuse of a child often can occur away from home, as well as in a family setting. However, when separated from home the child will often feel abandoned, unsure, timid and dependent on others for his care, and can fall into the hands of a perverted adult. It is gratifying to know that global attention is focusing on one of the most despicable forms of child abuse, sexual exploitation.

10. The Commission is reminded that the United States Senate established the Special Committee on Investigation of the Select Committee on Indian Affairs in 1987, which uncovered massive fraud, corruption and mismanagement in American Indian affairs. This investigation also found that in federally run schools for Indian children, Bureau of Indian Affairs (BIA) officials knew that school administrators had hired teachers with a history of prior offences of child molestation. Moreover, the BIA knew that its employees had failed to report or investigate repeated allegations of sexual abuse by teachers, in one case for 14 years. Yet, the BIA promoted negligent school administrators and, unlike all 50 states, never fully adopted a system that

required employees to report and investigate child abuse. It is significant to point this out because of the problems that result as a consequence of this repugnant behaviour, whose victims live in a nightmare.

11. Recently, the Pikanii Nation (Blackfoot Confederacy) announced a first-ever tribunal to hear about the incidence of abuse, crime and other genocidal acts in the aftermath of Indian children being forced to attend residential schools in Canada and boarding schools in the United States that were operated and sponsored by the two Governments. In both countries the Governments subcontracted the work of subjugation of the native peoples, especially their children, to Christian Churches. A spokesman, Long Standing Bear Chief of the Pikanii Nation in what is now called Montana, said, "The tribunal will be conducted according to aboriginal nation laws and customs and international law. We say these are international matters because they were done as part of treaties with the Indian Nations ...".

12. In closing, the IITC and its affiliate organizations encourage the Commission to look closely at how the Indian has survived in the United States and how the Indian Child Welfare Act would be strengthened if the United States of America would ratify the Convention on the Rights of the Child.
